

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES

vs.

Criminal No. 04-30032-MAP

FRANK KEOUGH, et al.,
Defendants

**DEFENDANT'S MOTION TO DISMISS
COUNTS 34, 35, 37, 39, 41 AND 43 (WITNESS TAMPERING)
FROM THE SECOND SUPERSEDING INDICTMENT**

Now comes the Defendant, Francis Keough, in the above-captioned matter, and moves this Honorable Court, pursuant to Rule 12(b) of the Federal Rules of Criminal Procedure, to dismiss Counts 34, 35, 37, 39, 41 and 43 (Witness Tampering) from the Second Superseding Indictment. As grounds therefor, the Defendant states:

1. Counts 34, 35, 37, 39, 41 and 43 (Witness Tampering) of the Second Superseding Indictment fail to contain "a plain, concise and definite written statement of the *essential facts* constituting the offense charged," as required by Rule 7(c) (1) of the Federal Rules of Criminal Procedure (emphasis supplied);
2. Counts 34, 35, 37, 39, 41 and 43 (Witness Tampering) of the Second Superseding Indictment purport to allege violation of 18 U.S.C. § 1512, but fail to state the requisite *essential facts* to support or constitute such an offense;
3. Counts 34, 35, 37, 39, 41 and 43 (Witness Tampering) of the Second Superseding Indictment fail to charge with reasonable certainty the nature of the offense allegedly committed;
4. The ambiguity and defects contained within Counts 34, 35, 37, 39, 41 and 43 (Witness Tampering) of the Second Superseding Indictment are violative of the Defendant's rights as

protected by the Fifth and Sixth Amendments to the United States Constitution

5. As a matter of law, the insufficiency of these Counts of the Second Superseding Indictment cannot be cured by a bill of particulars.

In further support thereof, the Defendant relies on his Memorandum of Law in Support of Defendant's Motion to Dismiss Counts 34, 35, 37, 39, 41 and 43 (Witness Tampering) from the Second Superseding Indictment, filed herewith.

Wherefore, by all of the above, the Defendant's Motion to Dismiss Counts 34, 35, 37, 39, 41 and 43 (Witness Tampering) from the Second Superseding Indictment must be allowed.

THE DEFENDANT,
FRANK KEOUGH

By: /s/ Daniel D. Kelly
Daniel D. Kelly, Esq.
101 State Street
Suite 715
Springfield, MA 01103
Tel.: (413) 733-0770
Fax: (413) 733-1245

CERTIFICATE OF SERVICE

I, Dan Kelly, Esq., hereby certify that I caused the foregoing document to be served upon the United States Attorney's Office at 1500 Main Street, Springfield, MA, by electronic service this 27th day of September, 2006.

/s/ Daniel D. Kelly
Daniel D. Kelly, Esq.
101 State Street
Suite 715
Springfield, MA 01103
Tel.: (413) 733-0770
Fax: (413) 733-1245